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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Encl. 10/1

Matter of: Transportation Debt Waivers -
Household Goods and Mobile Homes

File: B-229337

Date: June 21, 1988

DIGEST

1. Authority to waive uniformed services members', National Guard members' and civilian employees' debts arising out of erroneous payments of travel and transportation allowances was added to 10 U.S.C. § 2774, 32 U.S.C. § 716, and 5 U.S.C. § 5584, by Public Law 99-224, 99 Stat. 1741. As provided in section 4 of Public Law 99-224, the authority applies only to debts arising out of payments made on or after the effective date of the law, December 28, 1985.

2. A long-standing practice of the government in arranging transportation of employees' and service members' household goods incident to transfers of duty stations is for the government to contract with commercial carriers using government bills of lading (GBL's). Upon completion of the shipment the government pays the carrier and collects any excess charges from the member or employee for exceeding his or her authorized weight allowance or for extra services. Employees' or members' resulting debts do not arise out of "erroneous" payments, and therefore are not subject to consideration for waiver under 10 U.S.C. § 2774, 32 U.S.C. § 716, or 5 U.S.C. § 5584. Exceptional cases where there was some government error, such as erroneous orders, will be considered on a case-by-case basis.

3. Under the armed services voluntary do-it-yourself (DITY) program, transferred members move their own household goods and receive an incentive payment based on 80 percent of what it would have cost the government to move them by commercial carrier. The member may receive an advance payment based on his estimated weight of the goods with final settlement being made based on actual weight of the goods. In some cases because of inaccuracies in the weight estimate, the member must repay part of the advance received. The resulting debt is not subject to waiver consideration under 10 U.S.C. § 2774 because it did not arise out of an "erroneous payment," but was the result of the regular operation of the program. Exceptional cases where there was some

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government error, such as erroneous orders, will be considered on a case-by-case basis.

4. Uniformed services members and civilian employees are entitled to movement of their mobile homes in lieu of household goods at government expense upon a change in duty station. Their maximum entitlement is an amount equal to the cost of moving their maximum entitlement of household goods. In some cases the government arranges the move and pays the carrier the full cost, and in other cases the members or employees receive an advance and arrange the move themselves. In either case if the members or employees incur a debt to the government because of exceeding their maximum entitlement, the debts may not be considered for waiver under 10 U.S.C. § 2774, 32 U.S.C. § 716, or 5 U.S.C. § 5584, because they resulted from the regular operation of the program and did not arise out of "erroneous" payments. Exceptional cases where there was some government error, such as erroneous orders, will be considered on a case-by-case basis.

DECISION

This decision concerns the application of the authority to waive debts of uniformed services members and civilian employees arising out of erroneous payments of transportation allowances. It is being issued in response to several questions presented by the Air Force concerning under what circumstances the waiver authority may be applied to debts arising out of (1) shipments of members' or employees' household goods using commercial carriers under government bills of lading (GBL's), (2) members moving their own household goods under the do-it-yourself (DITY) program, and (3) movement of employees' or members' mobile homes.^{1/} Also presented were several questions concerning application of the waiver authority in connection with advance payments of travel allowances which are not being addressed here because related questions are currently under consideration in two other cases.

As is explained below, we find that generally the types of debts discussed here do not result from "erroneous" payments and, therefore, are not subject to consideration for waiver under the waiver statutes.

^{1/} The questions were presented to our Claims Group along with several related individual waiver requests by the Deputy Director, Settlement and Adjudication, Headquarters Air Force Accounting and Finance Center, Denver, Colorado.

Waiver Authority

As amended by Public Law 99-224 (December 28, 1985), § 2, 99 Stat. 1741, section 2774(a) of title 10, United States Code (Supp. III 1985), authorizes the waiver of--

"A claim of the United States against a person arising out of . . . an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the uniformed services . . . the collection of which would be against equity and good conscience and not in the best interests of the United States"

Similar waiver authorities apply to civilian employees, 5 U.S.C. § 5584 (1982 & Supp. III 1985), and to members of the National Guard, 32 U.S.C. § 716 (1982 & Supp. III 1985).

This additional authority to waive claims arising out of erroneous travel or transportation payments is applicable to payments made on or after the effective date of the new legislation, December 28, 1985. See Public Law 99-224, § 4, supra. Therefore, in answer to one of the Air Force's questions, it is the date when the erroneous payment was made which determines whether the case comes within the time period of the statute; payments made prior to December 28, 1985, are excluded from coverage under the new authority.

Also, by its express terms, this waiver authority applies only to claims "arising out of an erroneous payment." Thus, before a claim can be considered for waiver, it must be determined that the claim arose from an "erroneous payment" within the scope of the waiver statute. It is this provision which determines the answers to the remaining questions discussed below.

GBL Household Goods Shipments

It is the long-standing and standard practice of government agencies to ship the total weight of a qualifying individual's household goods at government expense and to then collect any charges for excess weight from the individual. In this regard, paragraph U5340-A of the Joint Federal Travel Regulations provides in part:

"General. The Government's maximum transportation obligation is the cost of one through HHG [household goods] movement of a member's prescribed weight allowance (see par. U5310-B) in one lot

from and to authorized places at a valuation equivalent to the lowest applicable rate established in the carrier's tariffs. The member will bear all costs of transportation arising from:

"1. transportation of weights in excess of the member's maximum authorized HHG weight allowance"2/

When a household goods shipment is made under this system, the GBL constitutes a contract between the government and the carrier under which the carrier is entitled to be paid for its services. Therefore, we conclude that there is no "erroneous payment" for purposes of the waiver statutes where the government in the first instance pays or bears the cost of a household goods shipment which exceeds the applicable weight allowance in reliance on collection of the overweight charges from the employee or member in accordance with the standard procedures described above. In these circumstances, the government has committed no "error," but has merely made payment in the normal course of business to satisfy its obligation to the carrier. Thus, the initial payment of excess weight charges by an agency in accordance with this standard practice is not "erroneous," and claims against service members or employees arising from such payments may not be considered for waiver under the waiver statutes, 10 U.S.C. § 2774, 32 U.S.C. § 716, or 5 U.S.C. § 5584.

We do recognize, however, that there may be some cases where the excess weight charges were incurred as the result of government error, such as where the excess weight was shipped on the basis of erroneous authorizing orders. We expect that these cases will be unusual, and they should be dealt with on a case-by-case basis.

DITY Moves

The DITY program is a voluntary system available to members of the armed forces who choose to move their own household goods incident to a change of duty station. Under the program the service member receives an incentive payment from the service equal to 80 percent of what it would have cost the government to ship the household goods (not in

2/ Essentially identical provisions were included in the Joint Travel Regulations, para. M8007-2, superseded by the JFTR. Also, similar provisions applicable to civilian employees are found in the Federal Travel Regulations, para. 2-8.3b(5) (Supp. I 1981).

excess of the member's weight allowance) by commercial carrier, less the cost incurred by the government for the DITY move.^{3/} The program is authorized by 37 U.S.C. § 406(k) and implementing regulations found in the JFTR, paragraph U5320-E, and the individual services' regulations. It is designed to provide a savings to the government while providing extra income to participating service members in the form of the incentive payment. The statute authorizes the advance payment of the incentive payment to the member. The final settlement is computed after the move is completed based (in most cases) on certified weight tickets the member obtains to establish the weight of the goods.

The Air Force submission indicates that their advance payments to members participating in the DITY program are based on estimates furnished by the members of the weight of their household goods. Because of inaccuracies in weight estimates, at times the members have received a greater amount in the advance payments than they are entitled to upon final settlement. The Air Force questions whether the resulting debts are appropriate for waiver in this type of case.

Advances made to members participating in the DITY program are made on the basis of the estimated weights of the members' household goods with the knowledge that the actual weights upon which final settlement will be made probably will be somewhat different. This is the way the program is designed to operate, and the fact that upon final settlement a member is found to have received more in the advance than he is ultimately entitled to would not convert the advance to an "erroneous payment" within the meaning of the waiver statute. Therefore, this type of debt would not be appropriate for consideration for waiver under 10 U.S.C. § 2774, 32 U.S.C. § 716, or 5 U.S.C. § 5584. Here too, we recognize that there may be some instances where overpayments were caused by government error, which will be dealt with on a case-by-case basis.^{4/}

^{3/} The major direct cost incurred by the government in most DITY moves is the rental paid by the government for the truck or trailer the member uses.

^{4/} In this regard, the Air Force also asked whether waiver could be considered for a debt arising when a member is actually overpaid for a DITY move upon settlement. Clearly a case such as this does involve an erroneous payment by the government and is therefore appropriate for waiver consideration.

Mobile Home Movements

Under 37 U.S.C. § 409, for uniformed services members, and 5 U.S.C. § 5724(b) for civilian employees, transportation of a mobile home is authorized incident to a change in duty station. The types of allowances authorized are prescribed in implementing regulations,^{5/} with the maximum entitlement being, in most cases, the maximum amount to which the service member or employee would be entitled for transportation of household goods.

There are two methods for arranging for the movement of a mobile home. One method is for the government agency to arrange for and pay the costs associated with the transportation, subject to collection from the employee or service member of any excess costs. The other method is for the employee or member to arrange the transportation and file a voucher at the conclusion of the move. Advances of funds are authorized in connection with the second method, with the advance being calculated based on the employee's or member's maximum entitlement to shipment of household goods from the old to the new station.

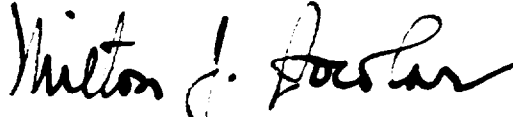
In connection with either arrangement, at times the costs incurred exceed the authorized allowances or there are charges for items such as repairs or maintenance to the mobile home which are not included in the authorized allowances. In such cases, similar to the excess costs for moving household goods, the employee or member is found to be in debt when final settlement is made for the excess costs the government has paid on his or her behalf or for a portion of the advance the employee or member received.

As with the situations involving household goods discussed above, the government's payment to the mobile home movers or the advances made to the employees or members who arrange their own transportation are not "erroneous" payments. They are payments made in accordance with the authorized practice with the understanding that excess costs are to be collected from the employee or member. Therefore, debts resulting from these practices are not subject to consideration for waiver under 10 U.S.C. § 2774, 32 U.S.C. § 716, or 5 U.S.C. § 5584. Here again, we recognize that there may be some cases where the excess payments resulted from government error such as improper orders. Those unusual cases will be dealt with on a case-by-case basis also.

^{5/} Joint Federal Travel Regulations, Chapter 5, Part F (uniformed services personnel), and Federal Travel Regulations, Chapter 2, Part 7 (civilian employees).

Conclusion

The individual cases the Air Force submitted relating to the discussion above will be returned under separate cover for further consideration by the Air Force under these guidelines. Any unusual cases which appear to constitute exceptions to the general rules may be submitted to us along with a full report as to the circumstances, including any erroneous orders or other applicable documentation.

for 
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